

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

MMG INSURANCE CO., as subrogee of  
Marc Berthiaume,  
Plaintiff

V.

SAMSUNG ELECTRONICS AMERICA, INC.  
and BEST BUY CO., INC.,  
Defendant

C.A. No.: 11-cv-430-JL

**DEFENDANT, BEST BUY CO., INC.’S ANSWER AND  
JURY DEMAND TO PLAINTIFF’S AMENDED COMPLAINT**

NOW COMES the defendant, Best Buy Co., Inc., and hereby answers the plaintiff's Amended Complaint as follows:

## JURISDICTION

1. The defendant declines to respond to paragraph 1 of the plaintiff's Amended Complaint as the allegations contained therein seek conclusions of law to which no response is required. To the extent that this paragraph is deemed to contain factual allegations, which require responses of the defendant, the defendant states that it lacks sufficient information with which to admit or deny the allegations contained in sub-paragraphs A, B and C, and calls upon the plaintiff to prove the same. The defendant admits to the allegations contained in sub-paragraph D.

### FACTS COMMON TO ALL COUNTS

2. The defendant lacks sufficient information with which to admit or deny the allegations contained in the first sentence of paragraph 2 of the plaintiff's Amended Complaint, and calls upon the plaintiff to prove the same. The defendant declines to respond to the second sentence of paragraph 2 of the plaintiff's Amended Complaint as it

does not contain any factual allegations directed to this defendant; to the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

3. The defendant denies the allegations contained in paragraph 3 of the plaintiff's Amended Complaint.

### **COUNT I**

4. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

5. The defendant declines to respond to paragraph 5 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

6. The defendant declines to respond to paragraph 6 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

7. The defendant declines to respond to paragraph 7 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

### **COUNT II**

8. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

9. The defendant declines to respond to paragraph 9 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

10. The defendant declines to respond to paragraph 10 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

11. The defendant declines to respond to paragraph 11 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

12. The defendant declines to respond to paragraph 12 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

### **COUNT III**

13. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

14. The defendant declines to respond to paragraph 14 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

15. The defendant declines to respond to paragraph 15 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

16. The defendant declines to respond to paragraph 16 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

#### **COUNT IV**

17. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

18. The defendant declines to respond to paragraph 18 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

19. The defendant declines to respond to paragraph 19 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

20. The defendant declines to respond to paragraph 20 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

**COUNT V**

21. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

22. The defendant declines to respond to paragraph 22 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

23. The defendant declines to respond to paragraph 23 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

24. The defendant declines to respond to paragraph 24 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

25. The defendant declines to respond to paragraph 25 of the plaintiff's Amended Complaint as it does not contain any factual allegations directed to this defendant. To the extent that this paragraph contains factual allegations, which require a response from this defendant, the defendant denies the same.

**COUNT VI**

26. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

27. The defendant denies the allegations contained in paragraph 27 of the plaintiff's Amended Complaint.

28. The defendant denies the allegations contained in paragraph 28 of the plaintiff's Amended Complaint.

#### **COUNT VII**

29. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

30. The defendant denies the allegations contained in paragraph 30 of the plaintiff's Amended Complaint.

31. The defendant denies the allegations contained in paragraph 31 of the plaintiff's Amended Complaint.

32. The defendant denies the allegations contained in paragraph 32 of the plaintiff's Amended Complaint.

#### **COUNT VIII**

33. The defendant repeats and incorporates by reference herein its answers to the preceding paragraphs of the plaintiff's Amended Complaint.

34. The defendant denies the allegations contained in paragraph 34 of the plaintiff's Amended Complaint.

35. The defendant denies the allegations contained in paragraph 35 of the plaintiff's Amended Complaint.

36. The defendant denies the allegations contained in paragraph 36 of the plaintiff's Amended Complaint.

37. The defendant denies the allegations contained in paragraph 37 of the plaintiff's Amended Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's Amended Complaint must be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

And further answering, the defendant states the plaintiff's Amended Complaint must be dismissed as the defendant owed no duty to the plaintiff.

#### **THIRD AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the conduct of the defendant was not the proximate cause of any injury or damage sustained by the plaintiff.

#### **FOURTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that, if the plaintiff sustained damages, as alleged, which the defendant denies, such damages were caused by a person or entity whose conduct the defendant did not control and for whom the defendant is not legally responsible.

#### **FIFTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's damages, if any, were the result of a superseding and/or intervening cause for which the defendant is not responsible.

**SIXTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that if the plaintiff proves that the defendant was negligent, as alleged, the plaintiff's subrogor was at fault to a greater degree than the defendant, and the plaintiff is, therefore, barred from recovery.

**SEVENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's recovery, if any, must be diminished by the proportion of fault, which is attributed to the plaintiff's subrogor.

**EIGHTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff is barred from recovery as any product designed, manufactured or sold by the defendant was substantially altered or modified after the product left the defendant's control.

**NINTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the defendant's conduct and the subject product were in conformance with the state of the art and prevailing industry standards.

**TENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that no notice of the alleged breach of warranties was given to the defendant as required by law, and the defendant was thereby prejudiced.



**ELEVENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that it has performed and fulfilled all promises and obligations arising under all applicable warranties of merchantability and therefore, the plaintiff is barred from recovery.

**TWELFTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that it is not liable for any implied warranty of merchantability, since any product sold by the defendant was fit for the ordinary purpose for which such product was used.

**THIRTEENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that any product sold was fit for its particular purpose, and therefore, the plaintiff is barred from recovery.

**FOURTEENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that state tort law is preempted by federal law, with which the defendant complied, and therefore, the plaintiff is barred from recovery.

**FIFTEENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's damages, if any, were the result of product misuse, abuse, and/or failure to properly inspect, maintain, service, and repair the product in question, or were the result of other superseding or intervening causes.

**SIXTEENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's alleged damages are speculative and cannot be established with reasonable certainty.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

And further answering, the defendant states that the plaintiff's claims are barred due to the failure to mitigate damages.

WHEREFORE, the defendant, Best Buy Co., Inc., demands that the plaintiff's Amended Complaint be dismissed, and that it be awarded attorney's fees and costs.

**JURY DEMAND**

**THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

Defendant,

BEST BUY CO., INC.,

By its attorneys,

/s/ Christopher P. Flanagan

Christopher P. Flanagan, Bar No.: 16231

Kristyn Dery Kaupas, Bar No.: 18306

WILSON ELSE

260 Franklin Street – 14<sup>th</sup> Floor

Boston, MA 02110-3112

(617) 422-5300

Dated: June 22, 2012

**CERTIFICATE OF SERVICE**

I, Christopher P. Flanagan, hereby certify that, on this 22<sup>nd</sup> day of June 2012, the foregoing document was filed through the ECF system, the document will be sent electronically to the registered participants, and paper copies will be served via first class mail on those indicated as non-registered participants.

/s/Christopher P. Flanagan

Christopher P. Flanagan